

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BONNIE M. BRYSON,)
) No. CV-07-0238-CI
Plaintiff,)
) ORDER DENYING PLAINTIFF'S
v.) MOTION FOR SUMMARY JUDGMENT
) AND DIRECTING ENTRY OF
MICHAEL J. ASTRUE,) JUDGMENT FOR DEFENDANT
)
)
Defendant.)
)
)

Before the court are cross-Motions for Summary Judgment. (Ct. Recs. 13, 16.) Attorney Maureen J. Rosette represents the Plaintiff. Special Assistant United States Attorney Terrye Shea represents the Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment and **GRANTS** Defendant's Motion for Summary Judgment.

JURISDICTION

Bonnie Bryson, Plaintiff, protectively filed for a period of disability and disability insurance benefits (DIB) and Supplemental Security Income benefits on September 15, 2005. (Tr. 137.) She alleged disability due "insomnia, depression, migraines, memory,

1 weakness, anxiety, . . . mood swings . . . , sinus, allergies and
2 acid reflux," with an alleged onset date of December 1, 2002. (Tr.
3 95.) Her application was denied both initially and upon
4 reconsideration. (Tr. 45.) She timely requested a hearing, which
5 was held on February 14, 2007, before Administrative Law Judge (ALJ)
6 Mary Bennett Reed. (Tr. 51, 445.) Plaintiff, who was represented by
7 counsel, medical expert Allen D. Bostwick, Ph.D., and vocational
8 expert K. Diane Kramer testified at the hearing. The ALJ denied
9 Plaintiff's application and the Appeals Council denied review,
10 making the ALJ's decision the final decision of the Commissioner.
11 (Tr. 5-7.) The instant matter is before the district court pursuant
12 to 42 U.S.C. § 405(g).

13 STANDARD OF REVIEW

14 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
15 court set out the standard of review:

16 A district court's order upholding the Commissioner's
17 denial of benefits is reviewed de novo. *Harman v. Apfel*,
18 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
19 Commissioner may be reversed only if it is not supported
20 by substantial evidence or if it is based on legal error.
21 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
22 Substantial evidence is defined as being more than a mere
23 scintilla, but less than a preponderance. *Id.* at 1098. Put
24 another way, substantial evidence is such relevant
25 evidence as a reasonable mind might accept as adequate to
26 support a conclusion. *Richardson v. Perales*, 402 U.S.
27 389, 401 (1971). If the evidence is susceptible to more
28 than one rational interpretation, the court may not
substitute its judgment for that of the Commissioner.
Tackett, 180 F.3d at 1097; *Morgan v. Commissioner of*
Social. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility,
resolving conflicts in medical testimony, and resolving
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
Cir. 1995). The ALJ's determinations of law are reviewed
de novo, although deference is owed to a reasonable
construction of the applicable statutes. *McNatt v. Apfel*,
201 F.3d 1084, 1087 (9th Cir. 2000).

SEQUENTIAL EVALUATION

The Social Security Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner is governed by a five-step sequential evaluation process for determining whether a plaintiff is disabled. 20 C.F.R. §§ 404.1520, 416.920, *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). As explained by the court in *Edlund*:

In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and detailed objective medical reports of h[is] condition from licensed medical professionals." *Id.* (citing 20 C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

Edlund, 253 F.3d at 1156-1157.

The initial burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971). This burden is met once a claimant establishes that a physical or mental impairment prevents her from engaging in her previous occupation. In steps one through four, a claimant must demonstrate a severe impairment and an inability to perform past work. *Erickson v. Shalala*, 9 F.3d 813, 816-17 (9th Cir. 1993). If a claimant meets those requirements, the burden shifts to the Commissioner to demonstrate a claimant can engage in other types of substantial

1 gainful work which exist in the national economy. *Id.* at 817
2 (*citing Gallant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984)).
3 To make this determination, the Commissioner must consider a
4 claimant's age, education, and work experience. 20 C.F.R. §
5 404.1520(a)(v). See *Bowen v. Yuckert*, 482 U.S. 137, 107 S.Ct. 2287
6 (1987).

7 It is the role of the trier of fact, not this court, to resolve
8 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
9 supports more than one rational impairment, the court may not
10 substitute its judgment for that of the Commissioner. *Tackett*, 180
11 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
12 If there is substantial evidence to support the administrative
13 findings, or if there is conflicting evidence that will support a
14 finding of either disability or non-disability, the finding of the
15 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
16 1230 (9th Cir. 1987). Nevertheless, a decision supported by
17 substantial evidence will be set aside if the proper legal standards
18 were not applied in weighing the evidence and making the decision.
19 *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433
20 (9th Cir. 1988).

21 **STATEMENT OF THE CASE**

22 Detailed facts of the case are set forth in the transcript of
23 proceedings and the ALJ's decision and are briefly summarized here.
24 Plaintiff was 34 years old at the time of the hearing. She was
25 divorced with one child. She had an 11th grade education and a high
26 school equivalency degree. (Tr. 461-62.) Plaintiff testified she
27 lived with her daughter and her mother, who helped her with
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1 shopping, household chores and child care. (Tr. 488, 491-92.) She
2 had past work experience as a home health care aide, a daycare
3 assistant, retail clerk, laborer, hostess, food server, food service
4 worker, clerical worker, receptionist, dry cleaning clerk, and
5 cashier. (Tr. 110-28, 503-08.) Plaintiff testified her numerous
6 jobs over the years did not last long because she moved often. She
7 stated she sometimes worked two part-time jobs, but was not fired
8 from any of her jobs. (Tr. 473.) She testified she could no longer
9 work because of pain in her back and numbness and weakness in her
10 legs and arms. (Tr. 474-75, 487.) She reported she used a walker,
11 a wheelchair and a cane to get around. (Tr. 483-84.) She stated
12 she also had problems with incontinence, fatigue, insomnia,
13 headaches, depression, and stress related panic attacks. (Tr. 493-
14 97.)

15 **ADMINISTRATIVE DECISION**

16 At step one, ALJ Reed found Plaintiff had not engaged in
17 substantial gainful activity since the onset of the disability. At
18 step two, she found Plaintiff had severe impairments of morbid
19 obesity (64 inches tall, 254 pounds), depressive disorder and
20 anxiety disorder. At step three, the ALJ found Plaintiff's
21 impairments or combination of impairments did not meet or medically
22 equal one of the listed impairments in 20 C.F.R. Part 404, Subpart
23 P, Appendix 1 (Listings). (Tr. 17.) The ALJ found that Plaintiff
24 was not credible. (Tr. 25-26.) At step four, she found the
25 Plaintiff could perform a wide range of medium level work,
26 considering her obesity and several non-exertional limitations due
27 to her depressive disorder and anxiety disorder. (Tr. 24.) Based
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1 in part on vocational expert testimony, the ALJ determined Plaintiff
2 was able to perform her past relevant work as a home health aide and
3 a day care worker, and concluded Plaintiff had not been under a
4 disability, as defined by the Social Security Act, through the date
5 of the decision. (Tr. 28-29.)

6 **ISSUES**

7 The question presented is whether the ALJ's decision is
8 supported by substantial evidence and is free of legal error.
9 Plaintiff argues that the ALJ erred when she: (1) improperly
10 rejected Plaintiff's subjective symptom complaints; (2) found
11 Plaintiff capable of medium exertion work; (3) improperly rejected
12 the opinions of Plaintiff's examining psychologists regarding
13 psychological limitations; and (4) relied on the testimony of a non-
14 examining medical expert. (Ct. Rec. 14 at 14-17.)

15 **DISCUSSION**

16 **A. CREDIBILITY**

17 **1. Limitations due to Physical Impairments**

18 Plaintiff argues the ALJ's reasons for rejecting her complaints
19 of weakness, fatigue and pain stemming from her neurological
20 condition were not legally sufficient. Citing *Byrnes v. Shalala*, 60
21 F.3d 639 (9th Cir. 1995), Plaintiff contends the ALJ was required to
22 give detailed and specific reasons for rejecting her symptom
23 testimony. (Ct. Rec. 14-15.) Defendant responds the ALJ properly
24 found there was no evidence of a medically determinable neurological
25 impairment and the alleged symptoms were properly rejected. (Tr.
26 23; Ct. Rec. 17 at 12.)

27 In *Fair v. Bowen*, 885 F.2d 597, the Ninth Circuit discussed a
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1 claimant's burden of presenting "objective medical evidence
2 establishing an impairment" in disability proceedings:

3 This is a threshold requirement that cannot be overlooked.
4 Our pain cases interpret a statute that provides: "An
5 individual's statement as to pain or other symptoms shall
6 not alone be conclusive evidence of disability as defined
7 in this section; there must be medical signs and findings
8 . . . which show the existence of a medical impairment .
9 . . which could reasonably be expected to produce the pain
10 or other symptoms alleged." 42 U.S.C. §423(d)(5)(A)
11 (Supp.V 1987). See *Swenson v. Sullivan*, 876 F.2d 683, 687
12 & n. 2 (9th Cir. 1989).

13 *Fair*, 885 F.2d at 601-02.

14 As stated in the Regulations, because an impairment cannot be
15 established by a claimant's statement of symptoms alone, the lack of
16 evidence indicating anatomical, physiological or psychological
17 abnormalities by "medically acceptable clinical and laboratory
18 diagnostic techniques" precludes a finding that a claimant is unable
19 to perform work due to the alleged symptoms. 20 C.F.R. §§ 404.1508,
20 416.908.

21 Here, the record in its entirety supports the ALJ finding that
22 there is no objective evidence of a medically determinable
23 impairment that would cause Plaintiff's physical symptoms of
24 numbness, falling, and weakness, or inability to sleep due to a
25 diagnosed sleep disorder. (Tr. 23-24.) Contrary to her argument,
26 Plaintiff's treating physicians did not conclude that she had
27 multiple sclerosis or a neurological disorder, and Plaintiff does
28 not reference specific evidence that supports her argument that she
suffers a neurological impairment. (Ct. Rec. 14 at 14-15.)
Rather, she contends that, "[c]learly the doctors believe there is
some validity to her complaints or else they would not be

1 prescribing occupational therapy, physical therapy, neurological
2 evaluations, canes, walkers and wheelchairs." (Ct. Rec. 14 at 14.)
3 However, evidence of a medical provider's efforts to evaluate and
4 treat a claimant is not sufficient to establish an impairment.
5 *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005). In *Ukolov*,
6 the court held that a claimant's own perception of an impairment,
7 "unaccompanied by a diagnosis or finding of impairment does not and
8 cannot establish the existence of a disability." *Id.* at 1006. A
9 medical opinion sufficient to establish an impairment must include
10 "'symptoms [and a] diagnosis.'" *Id.* (quoting *Social Security Ruling*
11 (SSR) 96-4p.)

12 Medical records consistently show that Plaintiff's medical
13 providers did not identify a physical impairment, neurological or
14 otherwise, to explain her complaints of weakness, numbness, and
15 unexplained falling down. Plaintiff was initially treated in
16 February 2003, at the Community Health Association of Spokane for
17 insomnia and depression complaints. (Tr. 194.) A sleep study in
18 February 2003, revealed no sleep disorder. (Tr. 165, 224.) The
19 treatment provider, Larry Varns, ARNP, advised she return to work to
20 improve her sleep cycle and give her more daily structure. (Tr.
21 199, 215.) In November, ARNP Varns refused to sign a work release
22 requested by Plaintiff, and recommended she continue her work
23 classes. (Tr. 217.) In March 2004, her antidepressants were
24 increased and by May 2004, she reported feeling much better. Her
25 provider noted that "function impairment is not considered
26 significant." (Tr. 230.) By July 2004, ARNP reported depression as
27 mild. (Tr. 233.) In September 2005, Plaintiff reported her
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1 antidepressants were working, she was attending school and work
2 study and had no complaints. She inquired about discontinuing her
3 medication. (Tr. 235.) In April 2005, Plaintiff's antidepressants
4 were changed due to increased symptoms. At this time, she also
5 reported problems with falling and instability. (Tr. 246.)

6 The record indicates Plaintiff transferred her medical care to
7 Family Medicine of Spokane in July 2005, and was referred to
8 neurology specialist William Bender, M.D., in October 2005. (Tr.
9 360, 368, 299.) Dr. Bender could not identify a "clear organic
10 neurologic cause" for Plaintiff's complaints of pain all over her
11 body, or the giving out of her knees without warning. (Tr. 299.)
12 Clinic notes indicate treating physician Dr. Snyders questioned
13 Plaintiff's effort on physical examination of her extremity
14 strength, and her cooperation in treatment efforts, and observed a
15 "great deal of psychosomatic contribution" to her complaints. (Tr.
16 374-75.) In March 2006, Dr. Snyders noted there were no objective
17 findings of muscular dystrophy or "other neurological pathology" in
18 her treatment records and referred Plaintiff to neurology specialist
19 Roy Kanter, M.D., for consultation and testing. (Tr. 371-378.) Up
20 to the time of referral to the specialist, neurological exams that
21 could not be "willfully altered," were "minimally abnormal," and
22 laboratory testing and imaging results were within normal limits.
23 Reviewing physician Norman Staley, M.D., concluded there were "no
24 discernible physical findings that would produce" claimant's
25 symptoms. (Tr. 390.)

26 Dr. Kanter examined Plaintiff in August 2006 and ordered a
27 battery of tests to identify the cause for her continued complaints
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1 and her stated need for assistive devices to walk. Nerve conduction
2 testing, imaging and blood work revealed no abnormalities except
3 mild degenerative changes in her cervical spine. (Tr. 413.) As
4 found by the ALJ, Dr. Kanter concluded, after reviewing Plaintiff's
5 entire medical record and test results, that there were no objective
6 neurological findings to explain her symptoms, that tests did not
7 indicate multiple sclerosis, spinal cord disease (which he could not
8 totally rule out at that time); he opined further that muscle or
9 neuromuscular junction disease "should not cause intermittent
10 numbness." (Tr. 406.) In a follow up visit in February 2007, after
11 further testing, Dr. Kanter definitively ruled out multiple
12 sclerosis, neurological disease, "central nervous system or
13 peripheral nervous system disease." He observed that Plaintiff
14 refused physical therapy and would not discuss psychological causes.
15 He had no further recommendations except psychological counseling.¹
16 (Tr. 22, 436-38.)

17 Because the record contains no medical evidence to support
18 Plaintiff's assertion that she has a neurological impairment or
19 sleep disorder, and the lack of objective medical evidence precludes
20 a finding of such impairments, the ALJ did not err in her finding
21 that there was no medically determinable exertional impairment² to
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23 ¹ Under the Regulations, more weight is given to a specialist's
24 medical opinion about "medical issues related to his or her area of
25 speciality" than to other medical sources. 20 C.F.R. §§
26 404.1527(d)(5), 416.927(d)(5).

27 ² In her residual functional capacity findings, the ALJ found
28 Plaintiff was limited to medium level work (as well as light and

1 explain Plaintiff's subjective physical complaints of numbness,
2 weakness, unexplained pain and falling. ALJ Reed was not required
3 to reject subjective symptom complaints related to an unestablished
4 diagnosis. 20 C.F.R. §§ 404.1508, 416.908; SSR 96-7p (if there is
5 no medically determinable impairment, the symptoms allegedly related
6 thereto cannot be found to affect claimant's ability to perform
7 basic work tasks). Further, the ALJ was not required to include
8 those symptoms in her sequential evaluation. *Macri v. Chater*, 93
9 F.3d 540, 545 (9th Cir. 1996).

10 **2. Limitations due to Mental Impairments**

11 The ALJ did find, however, that Plaintiff had mental
12 impairments of major depressive disorder and anxiety disorder that,
13 in combination, caused mild to moderate limitations in her ability
14 to work. (Tr. 24.) In doing so, she discounted Plaintiff's
15 subjective complaints regarding limitations caused by psychological
16 impairments. Plaintiff argues she is more limited due to
17 psychological factors than found by the ALJ. (Ct. Rec. 15 at 14.)

18 Once there is evidence of a medically determinable impairment
19 likely to cause alleged symptoms, the ALJ must provide specific and
20 cogent reasons for rejecting a claimant's subjective complaints.
21 *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991). When an ALJ
22 finds the claimant's testimony as to the severity of symptoms is

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24 sedentary work) due to her obesity. (Tr. 24; see also 20 C.F.R. §§
25 404.1567(c), 416.967(c); SSR 83-10.) This finding is supported by
26 the record, as clinical notes from providers reference her obesity,
27 but none of her physicians opined this condition precluded her from
28 working. (Tr. 228, 258, 368, 369, 406, 423, 438.)

1 unreliable, the ALJ must make a credibility determination with
2 findings sufficiently specific to permit the court to conclude the
3 ALJ did not arbitrarily discredit claimant's testimony. *Thomas v.*
4 *Barnhart*, 278 F.3d 947, 958-959 (9th Cir. 2002). Further, where
5 medical evidence of an impairment is presented, the lack of
6 objective medical evidence to corroborate severity is only one
7 factor considered by the Commissioner. *Bunnell*, 947 F.3d at 345.
8 In addition to the "ordinary techniques of credibility evaluation,"
9 the following factors also may be considered: (1) the claimant's
10 reputation for truthfulness; (2) inconsistencies in the claimant's
11 testimony or between his testimony and his conduct; (3) claimant's
12 daily living activities; (4) claimant's work record; and (5)
13 testimony from physicians or third parties concerning the nature,
14 severity, and effect of claimant's condition. *Id.*; see also *Thomas*,
15 278 F.3d at 958.

16 In the absence of affirmative evidence of malingering, the
17 ALJ's reasons for rejecting a claimant's subjective complaints must
18 be "clear and convincing." *Lingenfelter v. Astrue*, 504 F.3d 1028,
19 1038-39 (9th Cir. 2007); *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th
20 Cir. 2001); *Morgan*, 169 F.3d at 599. The ALJ "must specifically
21 identify the testimony she or he finds not to be credible and must
22 explain what evidence undermines the testimony." *Holohan v.*
23 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001) (citation omitted).

24 Here, the ALJ found that medical evidence established severe
25 psychological impairments that could reasonably be expected to cause
26 some of Plaintiff's subjective symptoms, and made detailed
27 credibility findings pursuant to SSR 96-7p. (Tr. 25-26.)
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1 Specifically, the ALJ reasoned Plaintiff's allegations of cognitive
2 difficulties were inconsistent with Plaintiff's ability to attend
3 high school until 11th grade and obtain her high school equivalency
4 degree. The ALJ specifically found Plaintiff's recent psychological
5 testing results showing average intelligence, good reading skills
6 and a normal working memory were inconsistent with her testimony of
7 cognitive deficits. Also, she cited Plaintiff's testimony that
8 undermined the severity of her cognitive deficits. (Tr. 25.) The
9 ALJ found, contrary to Plaintiff's statement she had trouble
10 understanding things, that she testified she had many jobs with
11 varied duties she was able to perform. She testified she did not
12 leave these jobs due to comprehension problems. Rather, she moved
13 frequently and was never fired from her jobs. (Tr. 25, 473.)

14 Other reasons articulated by the ALJ for rejecting Plaintiff's
15 testimony are supported by evidence found at specific cites to the
16 record: Plaintiff's repeated insistence that she has multiple
17 sclerosis when neurological testing found no such diagnosis;
18 complaints of incontinence with no medical records that she sought
19 specialist treatment; inconsistent reports regarding incontinence;
20 reports from third party treatment providers that Plaintiff should
21 return to work and Plaintiff's contradictory requests for work
22 releases; inconsistencies in her reports of past alcohol use;
23 inconsistent reports of family mental illness; poor effort on
24 testing; no testing results indicating cognitive difficulties, poor
25 work history, inconsistent reports of her abilities to get along
26 with people; refusal to participate in physical therapy and mental
27 health counseling. (Tr. 26.) These are clear and convincing
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1 reasons addressing specific claims, and are supported by substantial
2 evidence in the entire record. The ALJ did not err in her
3 credibility determination.

4 **B. EVALUATION OF PSYCHOLOGICAL MEDICAL EVIDENCE**

5 Plaintiff contends the ALJ failed to give legally sufficient
6 reasons for rejecting medical opinions that she had marked
7 psychological limitations that preclude her from working. (Ct. Rec.
8 14 at 18.) Specifically she argues that the opinions of examining
9 psychologists Rosekrans, Everhart, and Pollack and therapist Clark
10 were not rejected with legally sufficient reasons. She contends
11 that the ALJ's reliance on medical expert testimony was error. (Ct.
12 Rec. 14 at 16-17.)

13 In a disability proceeding, a treating or examining physician's
14 opinion is given more weight than that of a reviewing or non-
15 examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th
16 Cir. 2004); *Holohan*, 246 F.3d at 1202 (quoting *Reddick v. Chater*,
17 157 F.3d 715, 725 (9th Cir. 1998)); *Lester v. Chater*, 81 F.3d 821,
18 830 (9th Cir. 1996); *Smolen v. Chater*, 80 F.3d 1273, 1285-88 (9th Cir.
19 1996); *Flaten v. Secretary of Health and Human Serv.*, 44 F.3d 1453,
20 1463 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir.
21 1989). If a treating or examining physician's opinions are not
22 contradicted, they can be rejected only with "clear and convincing"
23 reasons. *Lester*, 81 F.3d at 830. If contradicted, the ALJ may
24 reject the opinion if specific, legitimate reasons that are
25 supported by substantial evidence are given. See *Flaten*, 44 F.3d at
26 1463; *Fair*, 885 F.2d at 605. To meet this burden, the ALJ can set
27 out a detailed and thorough summary of the facts and conflicting
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1 clinical evidence, state his or her interpretation of the evidence,
2 and make findings. *Thomas*, 278 F.3d at 957 (*citing Magallanes v.*
3 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

4 The ALJ is responsible for resolving conflicts and ambiguities
5 in the evidence, *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir.
6 1982), and she may use the analysis and opinion of an expert to
7 assist in her adjudication and resolution of conflicting medical
8 testimony. *Andrews*, 53 F.3d at 1041 (*citing Magallanes*, 881 F.2d
9 at 753). Testimony of a medical expert may serve as substantial
10 evidence when supported by other evidence in the record. *Magallanes*,
11 881 F.2d at 752. Courts have upheld an ALJ's decision to reject the
12 opinion of an examining physician based, in part, on the testimony
13 of a non-examining medical advisor where other evidence in the
14 record supports the medical advisor's opinions. *See Tonapetyan v.*
15 *Halter*, 242 F.3d 1144, 1148-49 (9th Cir. 2001); *Lester*, 81 F.3d at
16 831. If supported by substantial evidence, the ALJ's decision must
17 be upheld, even where the evidence is susceptible to more than one
18 rational interpretation. *Andrews*, 53 F.3d at 1039-40.

19 In her evaluation of the medical evidence, the ALJ must set
20 forth specific reasons for the weight given to all acceptable
21 medical source opinions. *Id.* at 1042. If the ALJ rejects a
22 contradicted medical opinion, she must give specific, legitimate
23 reasons for doing so. However, the court does not require a
24 "special incantation" in the rejection of medical opinions. Rather,
25 the reviewing court may draw specific and legitimate inferences from
26 the ALJ's summary of the evidence, interpretation and findings, as
27 long as they are supported by substantial evidence in the record.

1 *Magallanes*, 881 F.2d at 755. Historically, courts have recognized
2 internal inconsistencies, conflicting medical evidence, the absence
3 of regular medical treatment during the alleged period of
4 disability, and the lack of medical support for doctors' reports
5 based substantially on a claimant's subjective complaints as
6 specific, legitimate reasons for disregarding an examining
7 physician's opinion. *Thomas*, 278 F.3d at 957; *see also Flaten*, 44
8 F.3d at 1463-64; *Fair*, 885 F.2d at 605. Further, the more
9 consistent an opinion is with the record as a whole, the more weight
10 is given to that opinion. 20 C.F.R. § 404.1527(d)(4). The ALJ does
11 not need to accept the opinion of any medical source if it is
12 conclusory, brief or unsupported by findings. *Matney on Behalf of*
13 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992).

14 As summarized and interpreted by the ALJ, the medical evidence
15 reveals specific and legitimate inferences that support the ALJ's
16 rejection of assessments that Plaintiff had marked psychological
17 limitations that rendered her incapable of any work. (Tr. 27-28.)
18 In addition, the ALJ made sufficiently specific findings regarding
19 the individual psychologists' findings. She noted that the
20 evaluations of Drs. Everhart,³ Pollack and counselor Schoonover did
21 not have the advantage of a longitudinal or complete record to
22 consider in forming their opinions, and it was not evident that Dr.
23 Rosekrans had reviewed any records. (Tr. 27.) This is a legitimate
24 basis for discounting an examining physician's opinion, as the
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26 ³ The ALJ gave some weight to Dr. Everhart's assessments,
27 noting that Dr. Everhart opined Plaintiff would work best with few
28 people. (Tr. 27, n.6.)

1 record in its entirety must be considered in evaluating disability
2 claims. 20 C.F.R. §§ 404.1519p, 416.919p. Other reasons given for
3 discounting their opinions of marked limitations were:
4 inconsistencies between the doctors' observations and test results
5 within normal limits, concerns regarding impairments that were ruled
6 out by Dr. Kanter; inconsistencies in the record regarding the
7 claimant's self-reported symptoms and tests result; the lack of
8 narrative support in Dr. Pollack's assessment and his moderate
9 global assessment of functioning score and objective testing
10 results. (Tr. 27.) These are legally sufficient reasons amply
11 supported by the record. *Thomas*, 278 F.3d at 957.

12 While the ALJ considered the objective test scores in Ms.
13 Schoonover's report, which was co-signed by Dr. Rosekrans, she gave
14 little weight to the functional limitations assessed. She also
15 rejected the personality disorder diagnosis.⁴ (Tr. 28.) The ALJ
16

17 ⁴ Although Dr. Rosekrans formally signed the evaluation form
18 completed by Shannon Schoonover, MS, the record does not contain
19 sufficient evidence to establish that Dr. Rosekrans either examined
20 Plaintiff personally or closely supervised Ms. Schoonover to the
21 extent that he may be considered an examining psychologist. *Gomez v.*
22 *Chater*, 74 F.3d 967, 971 (9th Cir. 1996). Since Ms. Schoonover is
23 not an "acceptable medical source" whose opinion can establish an
24 impairment, 20 C.F.R. 404.1513, 416.913, her opinions regarding the
25 existence of medically determinable impairments are not given
26 weight. If an impairment is established by an acceptable medical
27 source, however, her observations regarding functional limitations
28 caused by that impairment must be considered and may be given

1 explained properly that the significantly low global assessment of
2 functioning assessed by Ms. Schoonover was based on sleep complaints
3 that were subjective and unreliable, and not supported by the formal
4 sleep study conducted which indicated no sleep disorder. The ALJ
5 also reasoned that the objective memory and intelligence tests
6 (which could not be altered by poor effort) administered by Ms.
7 Schoonover showed normal intelligence and memory and no cognitive
8 deficits. (*Id.*) She properly rejected the personality disorder
9 diagnosis as unsupported by the record in its entirety and by Dr.
10 Bostwick's testimony which was supported by the narrative reports
11 and objective testing. (*Id.*)

12 Regarding the opinions of therapist Becka Clark, from Family
13 Services Spokane, the ALJ adequately explained why the counselor's
14 assessed limitations were rejected, finding that Ms. Clark is not an
15 accepted medical source under the Regulations, so her diagnoses
16 carry no weight. *SSR 06-03-p*; see n.3 *supra*. The ALJ also found
17 Ms. Clark's assessment was not supported by objective testing or
18 other medical evidence and, as discussed above, Plaintiff's self-
19 report was unreliable. (Tr. 28.) Finally, the ALJ found Ms. Clark's
20 report that Plaintiff did not participate fully in counseling and
21 was discharged for lack of follow-up undermined the validity of Ms.
22 Clark's assessment. (Tr. 28, 392, 395.) The ALJ gave specific

23 _____
24 weight, depending on the relevant facts, including her
25 qualifications, how long she has worked with Plaintiff and how
26 consistent her opinions are with other evidence. Her opinions may
27 be rejected only with "germane" reasons. *Dodrill v. Shalala*, 12
28 F.3d 915, 919 (9th Cir. 1993); *SSR 06-03p*.

1 reasons, relevant to Ms. Clark's contact with Plaintiff, for
2 rejecting the marked and severe limitations assessed by Ms. Clark.
3 (Tr. 28, 341.)

4 In sum, ALJ Reed rejected marked and severe functional
5 limitation assessments relied upon by Plaintiff with specific,
6 legitimate reasons that are supported by the record. She adopted
7 the testimony of Dr. Bostwick, which was supported by the narrative
8 reports of the psychologists and objective testing in the record,
9 after she thoroughly discussed and analyzed the examining
10 psychologists' reports and other medical evidence, and properly
11 factored in Plaintiff's lack of credibility. *Webb v. Barnhart*, 433
12 F.3d 683, 688 (9th Cir. 2005).

13 CONCLUSION

14 The ALJ's ultimate findings of non-disability are based on
15 substantial evidence from the entire record and free of legal error.
16 Accordingly,

17 IT IS ORDERED:

18 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is
19 **DENIED.**

20 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 16**) is
21 **GRANTED.**

22 3. Judgment for the **DEFENDANT** shall be entered. The District
23 Court Executive is directed to enter this Order, forward copies to
24 counsel, and thereafter shall close this file.

25 DATED May 5, 2008.

26
27 S/ CYNTHIA IMBROGNO
28 UNITED STATES MAGISTRATE JUDGE